

FAQ for 54 Op. Att’y Gen. No. 7 (2012) that may impact library budgets

Introduction:

The Attorney General’s office has released an opinion that impacts MSL’s understanding of public library board powers when it comes to the library’s budget. In the past the library board has been seen as the final authority when it comes to the library’s budget, but this opinion states that MCA 7-6-4035 overrides that authority and gives the local governing body final authority over the approval of the library budget and mill levies. The opinion does confirm that library boards have sole discretion in the use of reserve funds and is also the final authority on individual line items within the budget.

Where can I find a copy of this opinion? <https://dojmt-zippykid.netdna-ssl.com/wp-content/uploads/54-Op-Atty-Gen-No-7-2012-libraries.pdf>

Why does the Attorney General state that the governing body has the final say?

The Attorney General is looking at the text under MCA 7-6-4035 which gives final budgetary authority to the local governing body. The text of that law is below:

7-6-4035. Tax levies for boards and commissions -- bond exemption. (1) The proposed budget and mill levy for each board, commission, or other governing entity are subject to approval by the governing body.

(2) Except for a port authority created under Title 7, chapter 14, part 11, the taxes, revenue, or fees legally pledged for the payment of debt or for the operations of a regional resource authority are not subject to approval by the governing body.

(3) Except for judgment levies under [2-9-316](#) or [7-6-4015](#), all tax levies are subject to [15-10-420](#).

This piece of code appears to take precedent over MCA 22-1-309 (6) Trustees – Powers and Duties:

22-1-309. Trustees -- powers and duties. The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall:

(6) prepare an annual budget, indicating what support and maintenance of the public library will be required from public funds, for submission to the appropriate agency of the governing body. A separate budget request shall be submitted for new construction or for capital improvement of existing library property.

What does this mean for our library?

The impact of this opinion will probably vary for each library. If you have a good relationship with your city or county and/or if the city or county is financially stable, you might not be negatively impacted by this opinion. If your governing body is facing financial concerns this opinion holds that the city or county has the power to cut your budget. Unfortunately the library board doesn't have much recourse – other than public support for the library.

Can you explain the impact for each type of library?

- City, county, or city-county libraries created by a resolution of their respective city council or county commission – local governing body has the final authority over the budget.
- Independent Public Library Districts formed by Title 22 – the county commission has the final authority over your budget.
- School-community libraries – if you are created by an interlocal agreement as defined in Title 7 you may be protected from this opinion. An interlocal agreement is considered a contract and as such it gives your library some protection since it defines the support level of the county or city.
- Multijurisdictional Service District libraries - if you are created by an interlocal agreement as defined in Title 7 you may be protected from this opinion. An interlocal agreement is considered a contract and as such it gives your library some protection since it defines the support level of the county or city.
- Libraries created by an interlocal agreement as defined in Title 7 - if you are created by an interlocal agreement as defined in Title 7 you may be protected from this opinion. An interlocal agreement is considered a contract and as such it gives your library some protection since it defines the support level of the county or city.

Does this opinion affect voted library levies? Yes, this opinion appears to give city councils and county commissioners final authority for all types of levies including ones voted on by the people within a community.

What can we do?

- Don't panic. This may or may not affect your library.
- Start collecting stories, data, and visual images that explain the value of the library and how it benefits the community. You may need this information to convince your local governing body to leave the library budget as is. This is a good idea to do all the time, not just in times of financial hardship. The online statistics center available at [http://msl.mt.gov/For Librarians/For Public Librarians/Statistics/default.asp](http://msl.mt.gov/For_Librarians/For_Public_Librarians/Statistics/default.asp) may assist you with presenting the library's information in a visual and attractive way.
- Talk to your library board about this opinion and what it means for the library. You need to discuss whether or not you think this opinion will impact the library's budget and if so what strategy you would like to take to minimize the impact.
- If you think the local governing body will take advantage of this opinion to cut the library's budget begin identifying library supporters who will speak up for the library. You will need them to attend the local governing body's budget hearing, work with local government officials, and publicly and privately campaign for continued support of the library.
 - The American Library Association (ALA) has grassroots advocacy webinars that may help - <http://www.ala.org/advocacy/advleg/advocacyuniversity/onlinecourses>
 - The state library has advocacy and funding materials that might also assist you with this process. You can search our catalog at <http://msl.mt.gov>.
 - Contact MSL staff for more information and assistance. We can try to connect you with other public libraries that have been successful in winning support for the library. Our contact information can be found at: [http://msl.mt.gov/About MSL/staff.asp](http://msl.mt.gov/About_MSL/staff.asp)
- Please talk to one of the following MSL staff about how this opinion might impact your library. We will use that information to decide upon the best course of action for libraries in Montana.
 - Tracy Cook, tcook@mtlib.org or 866-843-6524
 - Sarah McHugh, samchugh@mt.gov or 800-338-5087
 - Jennie Stapp, jstapp2@mt.gov or 800-338-5087
 - Lauren McMullen, lmcmullen@mtlib.org or 866-730-1681
 - Suzanne Reymer, sreymer@mtlib.org or 888-826-0837

What is MSL going to do at this time?

- Talk to public library directors and/or trustees about how this opinion may impact their library.
- Carefully explore the option of adding public libraries as an exception to MCA 7-6-4035 – most likely working in conjunction with the Montana Library Association. There may be strong opposition to adding libraries as an exception, so it may not be in the best interest of libraries to pursue adding libraries as an exception.
- Talk to the Governor’s Office, the Montana Association of Counties (MACO) and the Leagues of Cities and Towns about any law changes to the local government budget act.
- Assist public libraries who may be negatively impacted by this opinion by researching and helping these libraries build support for the library budget.

ANSWERS TO ADDITIONAL QUESTIONS THAT WE HAVE RECEIVED FROM LIBRARIES

This opinion appears to override the powers and duties of library boards- MCA 22-1-309 and MCA 22-1-707. Why is this?

- The answer to this question lies in a 2009 Attorney General Opinion about hospital districts. The number of that opinion is 58 Op. Att’y Gen No. 2. In that opinion the Attorney General stated:
“In light of the budget statutes adopted in 2001, an argument that this language obligates the Granite County Commissioners to fund the district Trustees’ proposed budget without change cannot be accepted.

[P10] First, that conclusion produces an absurd result. It would allow the hospital district board to prevent the local governing board from addressing other important governmental responsibilities. Since the county commission is responsible for the provision of numerous public services specified by law, see Mont. Code Ann. § 7-6-2527 (enumerating nonexclusive list of permissible county expenditure of property tax revenue), the legislature cannot have intended to make hospitals a superior priority that could consume so much of the county budget that other needs would go unfunded.”

- The Attorney General went on to explain that it seems unlikely that the legislature would make meaningless legislation, and if hospital district boards were allowed to demand whatever budget they wanted it would make the 2001 law changes meaningless. He states “In my opinion, the best way to provide meaning and effect to all of these statutes is to construe the later-adopted provisions of §§ 7-6-4035 and 7-6-4036 to control the interpretation of § 7-34-2133 and negate an interpretation that would require the county commissioners to rubber-stamp the proposed budgets of hospital districts.”
- This same reasoning appears to apply to library boards. If you would like to review the Attorney General Opinion on hospital districts you can find it at [http://msl.mt.gov/For Librarians/For Public Librarians/Library Law/AG Opinions/53-002.pdf](http://msl.mt.gov/For_Librarians/For_Public_Librarians/Library_Law/AG_Opinions/53-002.pdf).

Doesn't the Butte Silver Bow Case address the issue of library board powers?

- As you can see in the Attorney General Opinion the Butte Silver Bow Public Library Supreme Court case addressed the issue of whether or not the Butte Silver Bow Public Library was in fact a public library. It went on to address whether or not the library board had the powers listed in MCA 22-1-310 in terms of hiring and setting the compensation of the chief librarian. The case established these points which do strengthen the argument that library boards have authority over individual line items. It does not change the outcome of MCA 7-6-4035 which gives the local governing body authority over the bottom line of library budgets.